

**Part 135—Air Taxi Operators and Commercial Operators**

This change incorporates two Special Federal Aviation Regulations (SFAR):

SFAR 38-11, Certification and Operating Requirements, adopted May 31, which changes the termination date of SFAR 38-2 to June 1, 1996; and

SFAR 50-2, Special Flight Rules in the Vicinity of the Grand Canyon National Park, adopted June 9, which changes the termination date to June 15, 1997.

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Suggest filing this transmittal at the beginning of the FAR. It will provide a method for determining that all changes have been received as listed in the current edition of AC 00-44, Status of Federal Aviation Regulations, and a check for determining if the FAR contains the proper pages.



aircraft. Therefore, the operators of such aircraft will have to meet civil aircraft requirements, including those for certification, maintenance, and training, unless they qualify for narrowly defined exemptions. Aircraft operated by the Armed Forces and intelligence agencies, however, will retain their public aircraft status unless operated for a commercial purpose.

Although the 1994 Amendment gives the FAA Administrator certain authority to grant exemptions to "units of government" from the statutory requirements applicable to civil aircraft, the agency expects to invoke that exemption authority only when the public interest clearly demands it. To obtain an exemption under the statute, a unit of government must show that granting the exemption is necessary "to prevent an undue economic burden on the unit of government," and that the aviation safety program of the unit of government is "effective and appropriate to ensure safe operations of the type of aircraft operated by the unit of government." In acting on any exemption request the FAA will assess the safety of the operation in question. The FAA is developing guidance in the form of an advisory circular for use in this process. It should be noted that, it is unlikely that the FAA will be able to grant exemptions from type certification and airworthiness requirements for aircraft that have no history of civil certification.

In a notice published in the *Federal Register* on August 1, 1994, (59 FR 39192) the FAA invited comment on the question whether intergovernmental reimbursement for the use of government-owned aircraft prevents the aircraft involved from meeting the definition of public aircraft and, therefore, requires compliance with all safety regulations applicable to civil aircraft. That issue has been clarified by the 1994 Amendment, and the FAA will not be taking further action on that Notice.

As to whether public aircraft status is lost when one government reimburses another for the use of its aircraft, under the 1994 Amendment, if there is cost reimbursement, the aircraft will be civil aircraft unless the appropriate unit of government certifies "that the operation was necessary to respond to a significant and imminent threat to life or property," and "that no service by a private operator was reasonably available to meet the threat."

To implement both the 1987 and 1994 Amendments, this rule amends the definition of "public aircraft" in 14 CFR part 1. This rule also amends 14 CFR part 11 to reflect the Administrator's new statutory exemption authority concerning government-owned aircraft. While the Administrator's exemption authority in the past has been limited to exemptions from rules rather than from statutes, in this case Congress granted the Administrator the authority to grant exemptions from the statute—specifically, "from any requirement of part A of subtitle VII of title 49, United States Code." Pub. L. 103-411. As a result, this rule modifies Section 11.25(b)(3) to include exemptions, for government-owned aircraft only, from statutes as well as from rules.

One final conforming change to the regulations is in the applicability section of SFAR No. 38-2, entitled "Certification and Operating Requirements." In its present form, the applicability section provides that: "This Special Federal Aviation Regulation applies to persons conducting commercial passenger operations, cargo operations, or both . . ." This rule adds the words "operating civil aircraft in" to the applicability statement. The new law permits some public aircraft operations for which compensation is received. This change is necessary to assure that regulations intended only for application to civil aircraft are not inadvertently applied to public aircraft when public aircraft are permitted to be operated for compensation or hire.

#### **Good Cause for Immediate Adoption**

The FAA finds that notice and public comment on this rulemaking are unnecessary. This final rule is intended merely to conform the regulations to the statute. It is, in essence, a technical amendment that involves no exercise of agency discretion. The FAA is simply changing the rules to reflect, as closely as possible, the new statutory language. As a result, the agency for good cause finds that "notice and public procedure thereon" are unnecessary within the meaning of 5 U.S.C. 553(b)(B) of the Administrative Procedure Act. Individuals will have an opportunity to submit comments concerning this final rule by February 24, 1995.

by-case basis at the time exemptions are requested.

For the same reason explained above, the other analyses and determinations normally made a part of rulemaking procedures are determined to be unnecessary in this case and are not included in this document: an analysis of whether there is a significant economic impact on a substantial number of small entities, an international trade impact assessment, a federalism assessment.

### **Paperwork Reduction Act**

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

### **Conclusion**

For the reasons discussed in the preamble the FAA has determined that this final rule is not significant under Executive Order 12866 or DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

### **The Amendment**

Accordingly, 14 CFR parts 1, 11, 121, 125, 127, 129 and 135 are amended effective April 23, 1995.

The authority citation for part 135 continues to read as follows:

*Authority:* 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

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## **Special Federal Aviation Regulation 38–11**

### **Special Federal Aviation Regulation No. 38–2; Certification and Operating Requirements**

**Adopted: May 31, 1995**

**Effective: June 1, 1995**

**(Published in 60 FR 29753, June 6, 1995)**

**SUMMARY:** This amendment establishes a new termination date for Special Federal Aviation Regulation [SFAR] No. 38–2 [50 FR 23941; June 7, 1985], which contains the certification and operating requirements for persons transporting passengers or cargo for compensation or hire. The current termination date for SFAR 38–2 is June 1, 1995. Because the FAA has not completed a rulemaking process to consolidate and codify the certification and operations specifications requirements, an extension of the termination date is necessary. If this rulemaking process is completed before the new termination date of June 1, 1996, the FAA intends to rescind SFAR 38–2 as part of that rulemaking.

**DATES:** Effective date June 1, 1995. Comments must be received on or before August 1, 1995.

**ADDRESSES:** Send comments on the rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 18510, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in triplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rule Dockets weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

the economic aspects of the airline industry. To accomplish this, Congress directed that the Civil Aeronautics Board (CAB) be abolished on December 31, 1984, and that certain of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979–1984. By January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition to the change in economic regulatory activities. This action was consistent with the Congressional directive contained in Section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. SFAR 38 [43 FR 58366; December 14, 1978] set forth FAA certification and operating requirements applicable to all “air commerce” and “air transportation” operations for “compensation or hire.” (SFAR 38 did not address Part 133—External Load Operations, Part 137—Agriculture Aircraft Operations, or Part 91—Training and Other Special Purpose Operations.)

On December 27, 1984, the FAA issued SFAR 38–1 [50 FR 450; January 4, 1985], which merely extended the termination date of SFAR 38 and allowed the FAA time to propose and receive comments on revising SFAR 38.

On May 28, 1985, the FAA issued SFAR 38–2 [50 FR 23941; June 7, 1985], which updated SFAR 38 in light of changes since 1978 and clarified provisions stating which FAA regulations apply to each operator (including air carriers) and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were rigidly compartmentalized, and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (e.g., supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier’s economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an operator’s particular operation.

Since that time, the FAA has proposed rulemaking to codify the certification and operations specifications requirements currently found in SFAR 38–2 into a new part 119 [Notice No. 88–16] [53 FR 39852; October 12, 1988].

On April 11, 1990, the FAA reopened the comment period for Notice No. 88–16 [55 FR 14404; April 17, 1990] for comments on the definition of “scheduled operation” and the notification requirement for changes to operations specifications for a period of 30 days. The reopened comment period closed May 17, 1990. Based on the complexity of comments received, the FAA subsequently published an SNPRM on June 8, 1993 [58 FR 32248]; the comment period closed July 23, 1993.

Recently the FAA issued a notice proposing that many part 121 requirements should be imposed on certain part 135 operators [60 FR 16230; March 29, 1995]. If that proposal is adopted, the rules specifying the applicability of parts 121, 125, and 135 would be codified in a new part 119. In that same NPRM, the FAA proposed to rescind SFAR 38–2 if a final rule affecting commuter operators and establishing a new part 119 is issued. However, in the meantime, SFAR 38–2 contains the current requirements for certification and operations specifications. Thus, the FAA finds it necessary to extend the SFAR until June 1, 1996.

#### **Good Cause Justification for Immediate Adoption**

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38–2 of June 1, 1996. If the FAA publishes a final rule adopting a new part 119 into the Federal Aviation Regulations before

in light of the comments received. All comments will be available, both before and after the closing date for comments, in the rules docket for examination by interested parties.

#### **Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

This rule will not impose any additional incremental costs over those that would have been incurred when SFAR 38-2 was first issued. Therefore, I certify that the amendment will not have a significant economic impact on a substantial number of small entities.

#### **International Trade Impact Analysis**

The FAA finds this amendment will have no impact on international trade.

#### **Paperwork Reduction Act**

Information collection requirements in this SFAR have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0008.

#### **Federalism Implications**

The amendment herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient federalism applications to warrant the preparation of a Federalism Assessment.

#### **Conclusion**

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that this action is not significant under Executive Order 12866; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and the anticipated impact is so minimal that a full regulatory evaluation is not required.

#### **Adoption of the Amendment**

In consideration of the foregoing SFAR 38-2 (14 CFR parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended effective June 1, 1995.

The authority citation for part 135 is revised to read as follows:

*Authority:* 49 U.S.C. 106(g), 1153, 40101, 40105, 44113, 44701-44705, 44707-44717, 44722, and 45303.

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- (a)(1) Certificates.
- (a)(2) Certification requirements.
- (a)(3) Operating requirements.
- (b) Operations conducted under more than one paragraph.
- (c) Prohibition against operating without certificate or in violation of operations specifications.

## **2. Certificates and foreign air carrier operations specifications.**

- (a) Air Carrier Operating Certificate.
- (b) Operating Certificate.
- (c) Foreign air carrier operations specifications.

## **3. Operations specifications.**

## **4. Air carriers and those commercial operators engaged in scheduled intrastate common carriage.**

- (a)(1) Airplanes, more than 30 seats/7,500 pounds payload, scheduled within 48 States.
- (a)(2) Airplanes, more than 30 seats/7,500 pounds payload, scheduled outside 48 States.
- (a)(3) Airplanes, more than 30 seats/7,500 pounds payload, not scheduled and all cargo.
- (b) Airplanes, 30 seats or less/7,500 or less pounds payload.
- (c) Rotorcraft, 30 seats or less/7,500 pounds or less payload.
- (d) Rotorcraft, more than 30 seats/more than 7,500 pounds payload.

## **5. Operations conducted by a person who is not engaged in air carrier operations, but is engaged in passenger operations, cargo operations, or both, as a commercial operator.**

- (a) Airplanes, 20 or more seats/6,000 or more pounds payload.
- (b) Airplanes, less than 20 seats/less than 6,000 pounds payload.
- (c) Rotorcraft, 30 seats or less/7,500 pounds or less payload.
- (d) Rotorcraft, more than 30 seats/more than 7,500 pounds payload.

## **6. Definitions.**

- (a) Terms in FAR.
  - (1) Domestic/flag/supplemental/commuter.
  - (2) ATCO.
- (b) FAR references to:
  - (1) Domestic air carriers.
  - (2) Flag air carriers.
  - (3) Supplemental air carriers.

- (5) Size of aircraft.
- (6) Maximum payload capacity.
- (7) Empty weight.
- (8) Maximum zero fuel weight.
- (9) Justifiable aircraft equipment.

(1) The types of operating certificates issued by the Federal Aviation Administration;

(2) The certification requirements an operator must meet in order to obtain and hold operations specifications for each type of operation conducted and each class and size of aircraft operated; and

(3) The operating requirements an operator must meet in conducting each type of operation and in operating each class and size of aircraft authorized in its operations specifications.

A person shall be issued only one certificate and all operations shall be conducted under that certificate, regardless of the type of operation or the class or size of aircraft operated. A person holding an air carrier operating certificate may not conduct any operations under the rules of part 125.

(b) Persons conducting operations under more than one paragraph of this SFAR shall meet the certification requirements specified in each paragraph and shall conduct operations in compliance with the requirements of the Federal Aviation Regulations specified in each paragraph for the operation conducted under that paragraph.

(c) Except as provided under this SFAR, no person may operate as an air carrier or as a commercial operator without, or in violation of, a certificate and operations specifications issued under this SFAR.

## *2. Certificates and foreign air carrier operations specifications.*

(a) Persons authorized to conduct operations as an air carrier will be issued an Air Carrier Operating Certificate.

(b) Persons who are not authorized to conduct air carrier operations, but who are authorized to conduct passenger, cargo, or both, operations as a commercial operator will be issued an Operating Certificate.

(c) FAA certificates are not issued to foreign air carriers. Persons authorized to conduct operations in the United States as a foreign air carrier who hold a permit issued under Section 402 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1372), or other appropriate economic or exemption authority issued by the appropriate agency of the United States of America will be issued operations specifications in accordance with the requirements of part 129 and shall conduct their operations within the United States in accordance with those requirements.

## *3. Operations specifications.*

The operations specifications associated with a certificate issued under paragraph 2(a) or (b) and the operations specifications issued under paragraph 2(c) of this SFAR will prescribe the authorizations, limitations and certain procedures under which each type of operation shall be conducted and each class and size of aircraft shall be operated.

## *4. Air carriers, and those commercial operators engaged in scheduled intrastate common carriage.*

Each person who conducts operations as an air carrier or as a commercial operator engaged in scheduled intrastate common carriage of persons or property for compensation or hire in air commerce with—

(a) Airplanes having a passenger seating configuration of more than 30 seats, excluding any required crewmember seat, or a payload capacity of more than 7,500 pounds, shall comply with the certification requirements in part 121, and conduct its—

(1) Scheduled operations within the 48 contiguous states of the United States and the District of Columbia, including routes that extend outside the United States that are specifically authorized by the Administrator, with those airplanes in accordance with the requirements of part 121 applicable to domestic

specifications for those operations in accordance with those requirements, except the Administrator may authorize those operations to be conducted under paragraph (4)(a)(1) or (2) of this paragraph.

(b) Airplanes having a maximum passenger seating configuration of 30 seats or less, excluding any required crewmember seat, and a maximum payload capacity of 7,500 pounds or less, shall comply with the certification requirements in part 135, and conduct its operations with those airplanes in accordance with the requirements of part 135, and shall be issued operations specifications for those operations in accordance with those requirements; except that the Administrator may authorize a person conducting operations in transport category airplanes to conduct those operations in accordance with the requirements of paragraph 4(a) of this paragraph.

(c) Rotorcraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less shall comply with the certification requirements in part 135, and conduct its operations with those aircraft in accordance with the requirements of part 135, and shall be issued operations specifications for those operations in accordance with those requirements.

(d) Rotorcraft having a passenger seating configuration of more than 30 seats or a payload capacity of more than 7,500 pounds shall comply with the certification requirements in part 135, and conduct its operations with those aircraft in accordance with the requirements of part 135, and shall be issued special operations specifications for those operations in accordance with those requirements and this SFAR.

*5. Operations conducted by a person who is not engaged in air carrier operations, but is engaged in passenger operations, cargo operations, or both, as a commercial operator.*

Each person, other than a person conducting operations under paragraph 2(c) or 4 of this SFAR, who conducts operations with—

(a) Airplanes having a passenger seating configuration of 20 or more, excluding any required crewmember seat, or a maximum payload capacity of 6,000 pounds or more, shall comply with the certification requirements in part 125, and conduct its operations with those airplanes in accordance with the requirements of part 125, and shall be issued operations specifications in accordance with those requirements, or shall comply with an appropriate deviation authority.

(b) Airplanes having a maximum passenger seating configuration of less than 20 seats, excluding any required crewmember seat, and a maximum payload capacity of less than 6,000 pounds shall comply with the certification requirements in part 135, and conduct its operations in those airplanes in accordance with the requirements of part 135, and shall be issued operations specifications in accordance with those requirements.

(c) Rotorcraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less shall comply with the certification requirements in part 135, and conduct its operations in those aircraft in accordance with the requirements of part 135, and shall be issued operations specifications for those operations in accordance with those requirements.

(d) Rotorcraft having a passenger seating configuration of more than 30 seats or a payload capacity of more than 7,500 pounds shall comply with the certification requirements in part 135, and conduct its operations with those aircraft in accordance with the requirements of part 135, and shall be issued special operations specifications for those operations in accordance with those requirements and this SFAR.]

## *6. Definitions.*

(a) Wherever in the Federal Aviation Regulations the terms—

(1) “Domestic air carrier operating certificate,” “flag air carrier operating certificate,” “supplemental air carrier operating certificate,” or “commuter air carrier (in the context of Air Carrier Operating Certificate)” appears, it shall be deemed to mean an “Air Carrier Operating Certificate” issued and maintained under this SFAR.

(2) “Flag air carriers,” it will be deemed to mean a regulation that applies to scheduled operations to any point outside the 48 contiguous states of the United States and the District of Columbia conducted by persons described in paragraph 4(a)(2) of this SFAR.

(3) “Supplemental air carriers,” it will be deemed to mean a regulation that applies to charter and all-cargo operations conducted by persons described in paragraph 4(a)(3) of this SFAR.

(4) “Commuter air carriers,” it will be deemed to mean a regulation that applies to scheduled passenger carrying operations, with a frequency of operations of at least five round trips per week on at least one route between two or more points according to the published flight schedules, conducted by persons described in paragraph 4(b) or (c) of this SFAR. This definition does not apply to part 93 of this chapter.

(c) For the purpose of this SFAR, the term—

(1) “Air carrier” means a person who meets the definition of an air carrier as defined in the Federal Aviation Act of 1958, as amended.

(2) “Commercial operator” means a person, other than an air carrier, who conducts operations in air commerce carrying persons or property for compensation or hire.

(3) “Foreign air carrier” means any person other than a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

(4) “Scheduled operations” means operations that are conducted in accordance with a published schedule for passenger operations which includes dates or times (or both) that is openly advertised or otherwise made readily available to the general public.

(5) “Size of aircraft” means an aircraft’s size as determined by its seating configuration or payload capacity, or both.

(6) “Maximum payload capacity” means:

(i) For an aircraft for which a maximum zero fuel weight is prescribed in FAA technical specifications, the maximum zero fuel weight, less empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flight crew, foods and beverages, and supplies and equipment related to foods and beverages, but not including disposable fuel or oil).

(ii) For all other aircraft, the maximum certificated takeoff weight of an aircraft, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, and flightcrew). The allowance for the weight of the crew, oil, and fuel is as follows:

(A) Crew—200 pounds for each crewmember required by the Federal Aviation Regulations.

(B) Oil—350 pounds.

(C) Fuel—the minimum weight of fuel required by the applicable Federal Aviation Regulations for a flight between domestic points 174 nautical miles apart under VFR weather conditions that does not involve extended overwater operations.

(7) “Empty weight” means the weight of the airframe, engines, propellers, rotors, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

(8) “Maximum zero fuel weight” means the maximum permissible weight of an aircraft with no disposable fuel or oil. The zero fuel weight figure may be found in either the aircraft type certificate data sheet, or the approved Aircraft Flight Manual, or both.



### **International Trade Impact Statement**

This rule is expected to have neither an adverse impact on the trade opportunities for U.S. firms doing business abroad nor on foreign firms doing business in the United States. This assessment is based on the fact that part 135 air tour aircraft operators potentially impacted by this proposed SFAR do not compete with similar operators abroad. That is, their competitive environment is confined to the Grand Canyon National Park.

### **Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that all small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires Government agencies to review rules which may have "a significant economic impact on a substantial number of small entities." The small entities potentially impacted by this rule represent part 135 air tour operators with nine or less aircraft owned, but not necessarily operated. Based on FAA Order 2100.14A, the FAA's annualized threshold of significant economic impact for each of these small entities is estimated to be \$60,000 (in 1990 dollars). As a result of adopting the DOI assessment of negligible cost of compliance to the small entities operating over the Grand Canyon, which was published in the cost-benefit analysis for SFAR 50-2 on June 2, 1988, the FAA concludes that this rule will not have a substantial economic impact on a substantial number of small entities.

### **Federalism Determination**

The regulation herein will not have substantial direct effects on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. This regulation is promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which has been construed to preempt state law regulating the same subject. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

### **Conclusion**

For the reasons discussed in the preamble, and based on the findings in the Regulatory Evaluation Summary and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This amendment is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11024; February 26, 1979).

### **The Rule**

In consideration of the foregoing, the Federal Aviation Administration is amending SFAR 50-2 (14 CFR parts 91 and 135) effective June 15, 1992.

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Park. SFAR No. 50-2, which originally established the flight regulations for a period of 4 years, had previously been extended to allow the National Park Service (NPS) time to complete studies concerning aircraft overflight impacts on the Grand Canyon, and to forward its recommendations to the FAA. The NPS study, completed in September 1994, recommended alternatives, such as use of quiet aircraft, additional flight-free zones, altitude restrictions, operating specifications, noise budgets, and time limits. This rule allows the FAA sufficient time to review thoroughly the NPS recommendations as to their impact on the safety of air traffic over the Grand Canyon National Park, and to initiate and complete any appropriate rulemaking action.

**DATES:** *Effective date:* June 15, 1995. *Expiration date:* SFAR 50-2 expires June 15, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Ellen Crum, Air Traffic Rules Branch (ATP-230), Aerospace Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

On March 26, 1987, the FAA issued SFAR No. 50 (subsequently amended on June 15, 1987; 52 FR 22734) establishing flight regulations in the vicinity of the Grand Canyon. The purpose of the SFAR was to reduce the risk of midair collision, reduce the risk of terrain contact accidents below the rim level, and reduce the impact of aircraft noise on the park environment.

On August 18, 1987, Congress enacted legislation that required a study of aircraft noise impacts at a number of national parks and imposed flight restrictions at three parks: Grand Canyon National Park in Arizona, Yosemite National Park in California, and Haleakala National Park in Hawaii (Pub. L. 100-91).

Section 3 of Pub. L. 100-91 required that the Department of the Interior (DOI) submit to the FAA recommendations to protect resources in the Grand Canyon from adverse impacts associated with aircraft overflights. The law mandated that the recommendations (1) provide for substantial restoration of the natural quiet and experience of the Grand Canyon; (2) with limited exceptions, prohibit the flight of aircraft below the rim of the Canyon; and (3) designate zones that were flight free except for purposes of administration of underlying lands and emergency operations.

Further, Pub. L. 100-91 required the FAA to prepare and issue a final plan for the management of air traffic above the Grand Canyon. It also required that the plan establish a means to implement the recommendations of the DOI without change unless the FAA determined that executing the recommendations would adversely affect aviation safety. In that event, the FAA was required to revise the DOI recommendations to resolve the safety concerns and to issue regulations implementing the revised recommendations in the plan.

In December 1987, the DOI transmitted to the FAA preliminary recommendations for an aircraft management plan at the Grand Canyon. The recommendations included both rulemaking and nonrulemaking actions.

On May 27, 1988, the FAA issued SFAR No. 50-2 revising the procedures for operation of aircraft in the airspace above the Grand Canyon (53 FR 20264, June 2, 1988). The rule implemented DOI's preliminary recommendations for an airspace management plan with some modifications that the FAA initiated in the interest of aviation safety.

would have an adverse effect on safety. On June 15, 1992, because of a delay in the completion of the DOI study, the FAA promulgated a final rule to extend the expiration date of SFAR No. 50-2 to June 15, 1995 (57 FR 26766).

On September 12, 1994, the DOI submitted its final report and recommendations to Congress. The report recommends numerous revisions to the current flight restrictions contained in SFAR 50-2. In addition, the report recommends the use of quiet aircraft, additional flight-free zones, altitude restrictions, operating specifications, noise budgets, and time limits for flight in the vicinity of the Grand Canyon.

Upon completing a review of the NPS congressional report, the FAA may amend SFAR 50-2 through the rulemaking process. On April 12, 1995, the FAA published a notice of proposed rulemaking (NPRM) that proposed to extend the provisions of SFAR No. 50-2 for 2 years from the June 15, 1995, expiration date (60 FR 18700). This action extends the effectiveness of the rule, allowing the FAA sufficient time to determine if there is a need to adjust SFAR No. 50-2 in accordance with the NPS recommendations and to make any necessary changes.

### **Discussion of Comments**

The FAA received nine comments in support of, and one comment in opposition to, this action. Commenters included the Aircraft Owners and Pilots Association (AOPA); the Las Vegas Department of Aviation; the National Transportation Safety Board (NTSB); the U.S. Department of Interior, Bureau of Indian Affairs (BIA); environmental associations and air tour operators.

AOPA supports extension of the rule; however, it states that the rule is "inherently discriminatory" to many general aviation (GA) aircraft due to their operating characteristics. AOPA contends that this rule restricts many GA overflights to a narrow corridor and strongly opposes any similar overflight restrictions at any other national parks.

The Las Vegas Department of Aviation supports extension of the rule in order to allow the FAA sufficient time to study the NPS report. However, the commenter is concerned with several recommendations in the report and encourages the Department of Transportation to carefully consider the evidence, believing that there can be a balance among the air tour industry, the NPS, the FAA, and environmental groups.

The NTSB supports extending the SFAR for 2 years. However the NTSB believes that a permanent nationwide policy for air tour operators should be implemented.

The BIA states that, if the FAA extends the SFAR, it should consult with various Indian tribes residing within or having ties to the Grand Canyon area during the 2-year extension period concerning potential impact to their reservation environment.

Several commenters support extension of the current rule; however, they request an adjustment to the tour route known as the Dragon Corridor. The commenters believe that adjustment to this corridor would lessen the noise impact on visitors to the heavily used Hermit's Rest overlook and trail.

One commenter "strongly opposes" the SFAR in its present form, given the NPS report. The commenter recommends prohibiting an increase in the number of Grand Canyon tour flights from 1988 levels and requiring tour operators to provide the FAA with sufficient information to monitor the number of tour operations.

The FAA has determined that comments requesting amendments to the current rule are beyond the scope of the NPRM. The NPRM did not recommend any changes to the current SFAR; it merely proposed extending the rule in its existing form. The FAA is currently reviewing and analyzing the NPS report and recommendations as to the impact on the safety of air traffic at the Grand Canyon. The FAA has determined that any substantive change at this point will be inappropriate. Upon completing the review and analysis of the NPS report, the FAA may amend SFAR No. 50-2 through the rulemaking process.

As discussed above, Pub. L. 100-91 required the DOI to submit a report to Congress within 2 years of implementation regarding the success of the final airspace management plan for the Grand Canyon, including possible revisions. Now that this report has been forwarded to both Congress and the FAA, the FAA is required to comment on whether any of these revisions would have an adverse effect on aircraft safety.

Pub. L. 100-91 essentially reflects a decision by Congress that a final airspace management plan, currently set forth in SFAR No. 50-2, should continue permanently with any appropriate modifications developed as a result of the follow-on study. The statute and its legislative history show that Congress considered the environmental and economic concerns inherent in regulating the navigable airspace over the Grand Canyon. Since Congress, and not the FAA, determined to make permanent an airspace management plan as delineated in SFAR No. 50-2, this extension of SFAR No. 50-2 does not require compliance with the National Environmental Policy Act of 1969 (NEPA).

Assuming, for the sake of argument, that the FAA has discretion to terminate SFAR No. 50-2, this action to extend its effectiveness for 2 more years is categorically excluded from the requirements of the NEPA. (See FAA Order 1050.1D, Par. 31(a)(4), "Policies and Procedures for Considering Environmental Impacts.") A documented categorical exclusion has been placed in the docket.

Alternatively, the analysis in the 1988 Environmental Assessment (EA) and the Finding of No Significant Impact remain valid and support a determination that this extension is not likely to significantly impact the environment. The extension will not cause significant environmental impacts because it will not change the volume of traffic, the altitude of flight routes, or the noise characteristics of the aircraft typically used in canyon flights between now and 1997.

This extension will enable the FAA to consider recommendations that the DOI forwarded in September 1994 to enhance the effectiveness of the SFAR. Based upon its studies, the DOI has concluded that the SFAR has significantly reduced noise impacts in areas of the Grand Canyon. However, the DOI believes the benefits may be lost unless additional restrictions are adopted.

### **Regulatory Evaluation Summary**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule is not "a significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. This rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade.

SFAR No. 50-2 was justified based on the DOI's December 1987 benefit-cost analysis. This analysis stated that 40 to 45 operators conducted air tours over the Grand Canyon with an estimated revenue of \$30 to \$50 million per year. The number of operations over the Grand Canyon was growing, with operations at Grand Canyon National Park Airport increasing 300 percent from 1974 to 1980.

The establishment of large flight-free zones was expected to roughly double the time for Tusayan-based operators to reach the canyon rim. The DOI analysis assumed that these operators could adjust for the increased travel time by increasing the overall tour length and passing on any additional costs to the consumer. While the percent of tour time spent over the canyon would decrease, small price increases or slightly decreased flight time over the canyon was not expected to result in a decreased ridership. In addition, even though Tusayan-based companies would incur costs to modify advertising literature and tour narrations due to route change requirements, the DOI analysis assumed that these costs would likely be part of the normal operating program. The benefits to the park resources (natural quiet, wildlife, archeological features, etc.) and the more than 3,315,000 visitors (about 3 million front-

the rule will not cause significant economic impact because it will not change the volume of traffic, the altitude of flight routes, or the noise characteristics of the aircraft typically used in canyon flights between now and 1997. Therefore, the FAA has determined that the extension will not result in additional costs to the air tour operators.

Since the rule was first promulgated in 1987, the number of ground visitors increased by 50 percent. During this period, the estimated number of air tour operators remained unchanged, while the estimated revenue generated by the air tour industry has doubled. Therefore, the FAA has determined that any costs incurred by the air tour operators are not overly burdensome.

#### **Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a rule will have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A outlines the FAA's procedures and criteria for implementing the RFA. Small entities are independently owned and operated small businesses and small, not-for-profit organizations. A substantial number of small entities is defined as a number that is 11 or more and which is more than one-third of the small entities subject to this direct final rule. The FAA determined that this rule will not result in a significant economic impact on a substantial number of small entities.

#### **International Trade Impact Analysis**

This action is expected to have neither an adverse impact on the trade opportunities for U.S. firms doing business abroad nor on foreign firms doing business in the United States. This assessment is based on the fact that part 135 air tour operators potentially impacted by this rule do not compete with similar operators abroad. That is, their competitive environment is confined to the Grand Canyon National Park.

#### **Federalism Implications**

This action will not have substantial effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this action will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### **International Civil Aviation Organization and Joint Aviation Regulations**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization Standards and Recommended Practices (SARP) to the maximum extent practicable. For this action, the FAA has reviewed the SARP of Annex 10. The FAA has determined that this amendment will not present any differences.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), there are no requirements for information collection associated with this rule.

#### **Conclusion**

For the reasons set forth above, the FAA has determined that this rule is not a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this action will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is not considered significant under DOT Regulatory Policies and Procedures.



N., Long. 112°00'00" W. to Lat. 36°35'30" N., Long. 111°53'10" W. to Lat. 36°53'00" N., Long. 111°36'45" W. to Lat. 36°53'00" N., Long. 111°33'00" W.; to Lat. 36°19'00" N., Long. 111°50'50" W.; to Lat. 36°17'00" N., Long. 111°42'00" W.; to Lat. 35°59'30" N., Long. 111°42'00" W.; to Lat. 35°57'30" N., Long. 112°03'55" W.; thence counterclockwise via the 5 statute mile radius of the Grand Canyon Airport airport reference point (Lat. 35°57'09" N., Long. 112°08'47" W.) to Lat. 35°57'30" N., Long. 112°14'00" W.; to Lat. 35°57'30" N., Long. 113°11'00" W.; to Lat. 35°42'30" N., Long. 113°11'00" W.; to 35°38'30" N.; Long. 113°27'30" W.; thence counterclockwise via the 5 statute mile radius of the Peach Springs VORTAC to Lat. 35°41'20" N., Long. 113°36'00" W.; to Lat. 35°55'25" N., Long. 113°49'10" W.; to Lat. 35°57'45" N., 113°45'20" W.; thence northwest along the park boundary to Lat. 36°02'20" N., Long. 113°50'15" W.; to 36°00'10" N., Long. 113°53'45" W.; thence to the point of beginning.

**Section 2. Definitions.** For the purposes of this special regulation:

“Flight Standards District Office” means the FAA Flight Standards District Office with jurisdiction for the geographical area containing the Grand Canyon.

“Park” means the Grand(Canyon National Xark.

“Special Flight Rules Area” means the Grand Canyon National Park Special Flight Rules Area.

**Section 3. Aircraft operations: general.** Except in an emergency, no person may operate an aircraft in the Special Flight Rules Area under VFR on or after September 22, 1988, or under IFR on or after April 6, 1989, unless the operation—

(a) Is conducted in accordance with the following procedures:

**NOTE:** The following procedures do not relieve the pilot from see-and-avoid responsibility or compliance with FAR [91.119].

(1) Unless necessary to maintain a safe distance from other aircraft or terrain—

(i) remain clear of the areas described in Section 4; and

(ii) remain at or above the following altitudes in each sector of the canyon:

Eastern section from Lees Ferry to North Canyon and North Canyon to Boundary Ridge: as prescribed in Section 5.

Boundary Ridge to Supai Point (Yumtheska Point): 10,000 feet MSL.

Supai Point to Diamond Creek: 9,000 feet MSL.

Western section from Diamond Creek to the Grand Wash Cliffs: 8,000 feet MSL.

(2) Proceed through the four flight corridors described in Section 4 at the following altitudes unless otherwise authorized in writing by the Flight Standards District Office:

Northbound	Southbound
11,500 or	10,500 or
13,500 feet MSL	12,500 feet MSL.

(b) Is authorized in writing by the Flight Standard District Office and is conducted in compliance with the conditions contained in that authorization. Normally authorization will be granted for operation in the area described in Section 4 or below the altitudes listed in Section 5 only for operations of aircraft necessary for law enforcement, firefighting, emergency medical treatment/evacuation of persons in the vicinity of the Park; for support of Park maintenance or activities; or for aerial access to and

(e) Is conducted within 3 nautical miles of Whitmore Airstrip, Pearce Ferry Airstrip, North Rim Airstrip, Cliff Dwellers Airstrip, or Marble Canyon Airstrip at an altitude less than 3,000 feet above airport elevation, for the purpose of landing at or taking off from that facility.

(f) Is conducted under an IFR clearance and the pilot is acting in accordance with ATC instructions. An IFR flight plan may not be filed on a route or at an altitude that would require operation in an area described in Section 4.

**Section 4. Flight-Free zones.** Except in an emergency or if otherwise necessary for safety of flight, or unless otherwise authorized by the Flight Standards District Office for a purpose listed in Section 3(5), no person may operate an aircraft in the Special Flight Rules Area within the following areas:

(a) *Desert View Flight-Free Zone.* Within an area bounded by a line beginning at Lat. 35°59'30" N., Long. 111°46'20" W.; to 35°59'30" N., Long. 111°52'45" W.; to Lat. 36°04'50" N., Long. 111°52'00" W.; to Lat. 36°06'00" N., Long. 111°46'20" W.; to the point of origin; but not including the airspace at and above 10,500 feet MSL within 1 mile of the western boundary of the zone. The area between the Desert View and Bright Angel Flight-Free Zones is designated the "Zuni Point Corridor."

(b) *Bright Angel Flight-Free Zone.* Within an area bounded by a line beginning at Lat. 35°59'30" N, Long. 111°55'30" W.; to Lat. 35°59'30" N, Long. 112°04'00" W.; thence counterclockwise via the 5-statute mile radius of the Grand Canyon Airport point (Lat. 35°57'09" N., Long. 112°08'47" W.) to Lat. 36°01'30" N., Long. 112°11'00" W.; to Lat. 36°06'15" N., Long. 112°12'50" W.; to Lat. 36°14'40" N., Long. 112°08'50" W.; to Lat. 36°14'40" N., Long. 111°57'30" W.; to Lat. 36°12'30" N., Long. 111°53'50" W.; to the point of origin; but not including the airspace at and above 10,500 feet MSL within 1 mile of the eastern boundary between the southern boundary and Lat. 36°04'50" N. or the airspace at and above 10,500 feet MSL within 2 miles of the northwest boundary. The area bounded by the Bright Angel and Shinumo Flight-Free Zones is designated the "Dragon Corridor."

(c) *Shinumo Flight-Free Zone.* Within an area bounded by a line beginning at Lat. 36°04'00" N., Long. 112°16'40" W.; northwest along the park boundary to a point at Lat. 36°11'45" N., Long. 112°32'15" W.; to Lat. 36°21'15" N., Long. 112°20'20" W.; east along the park boundary to Lat. 36°21'15" N., Long. 112°13'55" W.; to Lat. 36°14'40" N., Long. 112°11'25" W.; to the point of origin. The area between the Thunder River/Toroweap and Shinumo Flight Free Zones is designated the "Fossil Canyon Corridor."

(d) *Toroweap/Thunder River Flight-Free Zone.* Within an area bounded by line beginning at Lat. 36°22'45" N., Long. 112°20'35" W.; thence northeast along the boundary of the Grand Canyon National Park to Lat. 36°15'00" N., Long. 113°03'15" W.; to Lat. 36°15'00" N., Long. 113°07'10" W.; to Lat. 36°10'30" N., Long. 113°07'10" W.; thence east along the Colorado River to the confluence of Havasu Canyon (Lat. 36°18'40" N., Long. 112°45'45" W.) including that area within a 1.5-nautical-mile radius of Toroweap Overlook (Lat. 36°12'45" N., Long. 113°03'30" W.); to the point of origin; but not including the following airspace designated as the "Tuckup Corridor": at or above 10,500 feet MSL within 2 nautical miles either side of a line extending between Lat. 36°22'55" N., Long. 112°48'50" W. and Lat. 36°17'10" N. Long. 112°48'50" W.; to the point of origin.

**Section 5. Minimum flight altitudes.** Except in an emergency or if otherwise necessary for safety of flight, or unless otherwise authorized by the Flight Standards District Office for a purpose listed in Section 3(b), no person may operate an aircraft in the Special Flight Rules Area at an altitude lower than the following:

(a) Eastern section from Lees Ferry to North Canyon: 5,000 feet MSL.

(5) Eastern section from North Canyon to Boundary Ridge: 6,000 feet MSL.

(c) Boundary Ridge to Supai (Yumtheska) Point: 7,500 feet MSL.

an aircraft in the Special Flight Rules Area except as authorized by operations specifications issued under that part.

**Section 7. *Minimum terrain clearance.*** Except in an emergency, when necessary for takeoff or landing, or unless authorized by the Flight Standards District Office for a purpose listed in Section 3(b), no person may operate an aircraft within 500 feet of any terrain or structure located between the north and south rims of the Grand Canyon.

**Section 8. *Communications.*** Except when in contact with the Grand Canyon National Park Airport Traffic Control Tower during arrival or departure or on a search and rescue mission directed by the U.S. Air Force Rescue Coordination Center, no person may operate an aircraft in the Special Flight Rules Area unless he monitors the appropriate frequency continuously while in that airspace.

**Section 9. *Termination date.*** This Special Federal Aviation Regulation expires on June 15, [1997].

**Authority:** 49 U.S.C. 1303, 1348, 1354(a), 1421, and 1422; 16 U.S.C. 228g; P.L. 100-91, August 18, 1987; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).]

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**SFAR 50-2:**  
**SPECIAL FLIGHT RULES IN THE VICINITY OF**  
**GRAND CANYON NATIONAL PARK**





